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and a plaintiff trustee for whom the present plaintiff has been substituted is res adjudicata in the instant action.

[Ed. Note.—For other cases, see Judgment, Cent. Dig. § 1212; Dec. Dig. § 689.\*]

**4. Taxation (§ 728\*)—Tax Sales—Title.**—Where pretended title is derived by a treasurer's deed on a sale for taxes assessed against persons having no title to the land, the purchaser under the tax sale takes no title.

[Ed. Note.—For other cases, see Taxation, Cent. Dig. §§ 1457-1461; Dec. Dig. § 728.\*]

**5. Appeal and Error (§ 1010\*)—Findings—Evidence to Support.**—Where the court finds against one party in spite of inconclusive evidence in his favor, the court on appeal must adopt the theory of evidence tending to support the judgment.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 3979-3982, 4024; Dec. Dig. § 1010.\*]

Error to Circuit Court, Rockingham County.

Action by Charles Catlett, trustee, against John E. Roller and others. From a judgment for plaintiff, after severance as to the named defendant, said defendant brings error. Affirmed.

*John E. Roller*, of Harrisonburg, and *Walton & Walton*, of Woodstock, for plaintiff in error.

*Bumgardner & Bumgardner*, of Staunton, and *Chas. A. Hammer*, of Harrisonburg, for defendant in error.

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BLOSE v. BLOSE.

Nov. 11, 1915. Rehearing Denied Nov. 27, 1915.

[86 S. E. 911.]

**1. Deeds (§ 19\*)—Rescission—Part Performance of Agreement.**—Where a deed from parents to their child provides, as a part of the consideration, that the child shall maintain them from the proceeds of the land conveyed, and, as a further consideration, for a substantial and reasonable sum of money for the land, the deed will not be revoked for failure of consideration, in that the grantee fails to maintain the grantors.

[Ed. Note.—For other cases, see Deeds, Cent. Dig. § 38; Dec. Dig. § 19.\*]

**2. Abatement and Revival (§ 8\*)—Grounds—Other Action Pending.**—Where at the time of bringing an action to rescind a contract there was pending another action to compel specific performance of a contract, and the court in that action could administer all the relief to

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

which the complainant was entitled, it was not error to dismiss the second suit.

[Ed. Note.—For other cases, see *Abatement and Revival*, Cent. Dig. §§ 39 56, 58-63, 68-72; Dec. Dig. § 8.\* 1 Va.-W. Va. Enc. Dig. 15.]

**3. Contracts (§ 235\*)—Construction—Contract for Maintenance.**—A contract providing that "it is further understood that in any event the parties of the second part are to have their lifetime maintenance from the place" conveyed contemplates a reasonable and comfortable support realized from the annual proceeds of the place sold when operated in a prudent manner, but does not contemplate the consumption of the corpus of the estate.

[Ed. Note.—For other cases, see *Contracts*, Cent. Dig. §§ 1101-1116; Dec. Dig. § 235.\* 3 Va.-W. Va. Enc. Dig. 305.]

**4. Contracts (§ 308\*)—Consideration—Payment Pendente Lite.**—Where, in a suit to enforce a contract for the maintenance of plaintiff, payments are made pendente lite, they are to be considered as in lieu of the support which plaintiff claims under the contract.

[Ed. Note.—For other cases, see *Contracts*, Cent. Dig. §§ 1463, 1464; Dec. Dig. § 308.\*]

**5. Contracts (§ 316\*)—Construction—Payment Pendente Lite—Effect.**—The fact that one who has agreed to support his parents during the pendency of an action to enforce the agreement makes payments to them will not cut off their right of action, where he had previously breached the contract for a long period of time.

[Ed. Note.—For other cases, see *Contracts*, Cent. Dig. §§ 1382-1387, 1395, 1398-1400, 1480-1491; Dec. Dig. § 316.\*]

**6. Contracts (§ 303\*)—Construction—Agreements for Support.**—Where grantee of a deed agreed as part of the consideration to support the grantors, and subsequently failed to support them as agreed, but notified them to remove from the place, which, by the agreement, they were permitted to occupy, he cannot avoid liability for their support on the ground that he is not compelled to support them, except upon the place from which, by his own wrongful act, they were compelled to remove.

[Ed. Note.—For other cases, see *Contracts*, Cent. Dig. §§ 1049-1443; Dec. Dig. § 303.\*]

**7. Evidence (§ 419\*)—Parol Evidence—Consideration.**—Parol evidence is admissible to show the real consideration for a deed which one party claims is not fully and directly recited therein.

[Ed. Note.—For other cases, see *Evidence*, Cent. Dig. §§ 1912-1928; Dec. Dig. § 419.\*]

**8. Contracts (§ 191\*)—Construction—Agreements for Support.**—An agreement for the support of the grantors, being a part of the consideration for the conveyance, will be construed liberally in favor of

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

the grantors, and if there is no exact precedent for the relief to be granted, the court will devise a remedy.

[Ed. Note.—For other cases, see Contracts, Cent. Dig. §§ 852-855; Dec. Dig. § 191.\*]

**9. Contracts (§ 208\*)—Construction—Equities.**—Where a contract for the support of grantors by the grantee of land did not expressly require them, in order to secure the support, to remain upon the land, the court will construe the contract strictly against the grantee who has breached the contract, and will not require the grantors to remain upon the land.

[Ed. Note.—For other cases, see Contracts, Cent. Dig. §§ 029-035; Dec. Dig. § 208.\*]

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DAVY POCAHONTAS COAL CO. *v.* KAYLOR.

Jan. 13, 1916.

[87 S. E. 549.]

**1. Brokers (§ 7\*)—Contracts—Construction.**—A contract whereby plaintiff was made sales agent for the defendant coal company provided that the tonnage to be furnished and delivered plaintiff should be based upon 50 per cent. of the total output of commercial coal mined, but that, in event plaintiff should be unable to sell and dispose of 50 per cent. of the total output, then the coal company might market that portion of which plaintiff could not dispose in other territory free from plaintiff's claims for commission. The contract also provided that, if plaintiff could dispose of a greater percentage than 50 per cent. of the output, and the coal company could furnish the increase, it agreed to do so, in which case plaintiff should receive the same commission as he was entitled to under the contract. The contract gave plaintiff exclusive agency in a designated territory. Held, that plaintiff was entitled to dispose of 50 per cent. of the output of the coal company, and more if it could furnish it, and, in case of his failure to dispose of the coal, the coal company was entitled to dispose of such residue only in territory outside of that in which plaintiff had the exclusive agency.

[Ed. Note.—For other cases, see Brokers, Cent. Dig. §§ 5-8; Dec. Dig. 7.\* 2 Va.-W. Va. Enc. Dig. 633.]

**2. Brokers (§ 63\*)—Compensation—Right to.**—Where an agent of a coal company under an agreement that it should pay him a stipulated commission, negotiated sales with another concern, he is entitled to his commission on such sales, though the company for some reason did not deliver the coal.

[Ed. Note.—For other cases, see Brokers, Cent. Dig. §§ 79, 81, 94-96; Dec. Dig. 63.\* 2 Va.-W. Va. Enc. Dig. 638.]

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.